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BILLINGS DIV.

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PATRICK E. DUFFY, CLERK

BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

LUCIEN S. BONCK,)	CV-11-37-BLG-RFC-CSO
)	
Plaintiff,)	
)	
vs.)	
)	ORDER ADOPTING FINDINGS
)	AND RECOMMENDATIONS OF
ANN-MARIE McKITTRICK,)	U.S. MAGISTRATE JUDGE
)	
Defendant.)	
_____)	

United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendations with respect to the 28 U.S.C. §§ 1915 & 1915A prescreening of Bonck's § 1983 pro se prisoner Complaint. Similar to the frivolous lawsuit Bonck filed against Defendant Ann-Marie McKittrick in 2009, Judge Ostby concludes the Complaint must be dismissed without leave to amend because Defendant

McKittrick is shielded with prosecutorial immunity. Magistrate Judge Ostby alternatively concluded that Bonck's Complaint fails to state a claim for relief because habeas corpus, not § 1983, is Bonck's only available remedy for the relief he seeks. Finally, Judge Ostby recommends that this dismissal count as a "strike" pursuant to 28 U.S.C. § 1915(g) and that this Court certify that an appeal would be taken in bad faith.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no objections have been filed and the time for objection has passed. Although failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact, *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999), it does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After reviewing the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

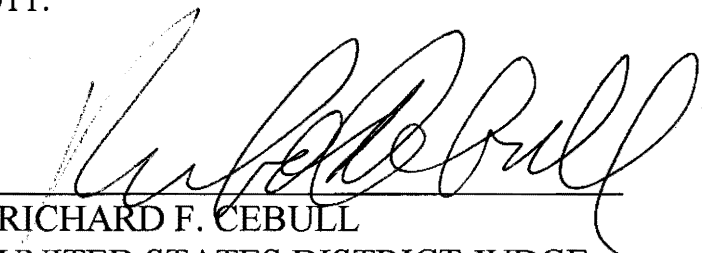
Accordingly, **IT IS HEREBY ORDERED** as follows:

- (1) Bonck's Complaint (*doc. 2*) is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted;
- (2) the docket shall reflect that this dismissal counts as one strike against Bonck pursuant to 28 U.S.C. § 1915(g); and

- (3) the docket shall reflect that this Court certifies pursuant to Rule 24(a)(3)(A) that any appeal of this dismissal would be frivolous and not taken in good faith.

The Clerk of Court shall notify the parties of the entry of this Order and enter judgment accordingly.

DATED the 2nd day of June, 2011.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE